

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

FILED

OCT 04 2011

GREGORY A. ESQUIVEL,

Petitioner,

vs.

WARDEN, F.C.I., EL RENO,

Respondent.

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ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
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No. CIV-11-365-W

ORDER

On August 3, 2011, United States Magistrate Judge Robert E. Bacharach heard oral argument in this matter. See Docs. 17, 21. Thereafter, on August 29, 2011, he issued his Proposed Findings of Fact and Conclusions of Law, see Doc. 25, and advised petitioner Gregory A. Esquivel that he had the right to object to the same.

The matter now comes before the Court on Esquivel's Objection to Report and Recommendation [Doc. 28] file-stamped September 9, 2011, and his Substitution and Correction of Pleadings [Doc. 29]¹ file-stamped September 20, 2011. Upon de novo review of the record, the Court concurs with Magistrate Judge Bacharach's suggested disposition of this matter.

Esquivel was sentenced in both a Missouri state court and the United States District Court for the Western District of Missouri. United States v. Esquivel, No. 06-298-06-CR-W-

¹Because the Court determined that a copy of the transcript of the oral argument would aid Esquivel in preparing his objections to Magistrate Judge Bacharach's Proposed Findings of Fact and Conclusions of Law, the Court on September 6, 2011, found pursuant to title 28, section 753(f) of the United States Code that Esquivel, who is proceeding pro se and in forma pauperis in this matter, was entitled to a copy of the transcript at no cost. See Doc. 27.

Attached to his Substitution and Correction of Pleadings [Doc. 29] is a corrected page four to his Objection to Report and Recommendation that reflects the page numbers of the transcript. See Doc. 29 at 3.

ODS. The parties have agreed that the time period—June 28, 2007, to August 14, 2008—was credited by the Missouri Department of Corrections against Esquivel's state sentence.

Title 18, section 3585(b) of the United States Code expressly prohibits credit against a federal sentence if the same time-period has been credited against a state sentence. The Federal Bureau of Prisons therefore cannot give Esquivel credit against his federal sentence for that period of time.

Accordingly, the Court

(1) ADOPTS Magistrate Judge Bacharach's Proposed Findings of Fact and Conclusions of Law [Doc. 25] filed on August 29, 2011;

(2) GRANTS the respondent's Motion to Dismiss [Doc. 12] filed on May 19, 2011, to the extent the respondent has sought dismissal under section 3585(b);

(3) because Esquivel is not entitled to the relief he has requested, DENIES the Petition for Habeas Corpus Relief [Doc. 1] file-stamped April 1, 2011; and

(4) ORDERS that judgment issue forthwith in favor of the respondent.

ENTERED this 4th day of October, 2011.


LEE R. WEST
UNITED STATES DISTRICT JUDGE